

Protecting civilians from explosive violence



1 Defining the humanitarian problem

IKV Pax Christi welcomes comments, suggestions and questions, please contact us at: info@ikvpaxchristi.nl. For more information about IKV Pax Christi, go to www.ikvpaxchristi.nl/uk.

Authors *

Roos Boer

Bart Schuurman

Miriam Struyk

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An ethnic Albanian boy, removes some burnt chairs from his home destroyed during the war, in Malisevo, Kosovo (picture taken 21 June 1999). Many houses in Kosovo were destroyed during the war, both by Serbian fighters as by the NATO bombardments. © ANP

* Bart Schuurman worked as a consultant for IKV Pax Christi and Miriam Struyk and Roos Boer are policy advisors for IKV Pax Christi.

Table of Contents

| | | |
|----|-----|---|
| 2 | i | Summary and recommendations |
| 5 | ii | Glossary |
| 6 | 1 | Introduction |
| 8 | 2 | Explosive weapons: defining the humanitarian problem |
| 10 | 2.1 | What are explosive weapons? |
| 11 | 2.2 | Who uses explosive weapons and when? |
| 14 | 2.3 | The humanitarian impact of explosive weapons |
| 16 | 2.4 | Conclusions |
| 18 | 3 | Explosive weapons: origins of the debate and the role of international law |
| 19 | 3.1 | Origins of the explosive weapons debate |
| 19 | 3.2 | International humanitarian law and explosive weapons |
| 21 | 3.3 | International Humanitarian Law and the explosive weapons debate |
| 24 | 3.4 | Conclusions |
| 26 | 4 | What is to be done? Avenues for policy and advocacy |
| 27 | 4.1 | Bringing in the state |
| 29 | 4.2 | Bringing in the non-state actor |
| 31 | 4.3 | A framework for action: towards the stigmatization of explosive violence in populated areas |
| 34 | 4.4 | The role of the 2010 Oslo Commitments |
| 34 | 4.5 | Limitations on the collection and analysis of conflict data |
| 35 | 4.6 | Conclusions |
| 36 | 5 | References |

i

Summary & Recommendations

From relatively simple improvised explosive devices to advanced aircraft-delivered bombs and missiles, all explosive weapons share certain characteristics that make their use in populated areas especially dangerous for civilian populations. By projecting a blast wave and shrapnel, explosive weapons indiscriminately damage the area around the point of detonation. Recent research has indicated that when such weapons are used in populated areas, non-combatants constitute the overwhelming majority of those killed and injured. Furthermore, explosive weapons can also destroy critical infrastructure and frequently pose a long-term risk to populations in the form of unexploded ordnance. For these and other reasons, the use of explosive weapons in populated areas urgently needs to be addressed.

This report provides readers with an overview of current thinking on the problem of explosive violence in populated areas. Following the introduction, the second chapter will focus on defining the problem and getting to grips with its humanitarian impact. In the third chapter, relevant developments in international humanitarian law as well as recent arms control treaties will be reviewed to assess their relevance to the explosive weapons dilemma. The fourth and final chapter of this report will explore possibilities and opportunities for policy makers and those engaged in advocacy efforts to improve the protection of civilians from explosive violence.

Throughout the report short case studies of the use of explosive weapons in populated areas are included.

The case studies are selected by the authors to represent a diversity in time of use, geographical spread as well as the use by state and non-state actors; to exemplify the scope of the problem as well as to highlight the humanitarian imperative to protect civilians against the use of explosive violence.

The main recommendations to states, users, (international) policy makers and advocacy groups presented are:

- » **Build the debate:** by adopting a common language, those parties concerned with explosive violence in populated areas can advocate a common cause, attract public and media attention, and challenge the status quo which views the use of explosive weapons in populated areas as a regrettable but ‘normal’ aspect of armed conflicts.
- » **Build transparency:** States should collect data on the human costs of the use of explosive weapons in populated areas. By collecting detailed information on the humanitarian impact of explosive weapons’ use in populated areas, and by reminding states of their legal obligations to do so, states, policy makers and advocacy groups can more accurately assess the risks that explosive weapons pose to civilians, and review states’ compliance with international humanitarian law.
- » **Build accountability:** by challenging users to justify when and how they use explosive weapons in populated areas, the international community can improve its ability to hold states accountable for the consequences of explosive violence.

» **Build recognition of victims' rights:** states are legally obliged to provide assistance to the victims of specific explosive weapons. Efforts should be deployed to broaden state responsibility to encompass any kind of explosive weapon, and to increase states' responsibility for assisting with the post-conflict clearance of unexploded ordnance.

The Charter of the UN prohibits “*the threat or use of force against the territorial integrity or political independence of any state*”. There is only one legal caveat for the use of force other than self-defence: “security Council directed or authorized use of force to restore or maintain international peace and security” in line with its responsibilities under the UN Charter. In addition to the prohibiting the threat or the use of force the Charter also reaffirms “*faith in fundamental human rights, and the dignity and worth of the human person*”. In the vision of IKV Pax Christi, the obligation to respect human rights is unconditional. Therefore, under strict criteria, exceptions to the rule on non-use of force are possible if they aim to restore the international rule of law. These strict conditions include the occurrence of large scale human rights violations, in a situation where the use of force, as last resort, is the only way to bring an end to atrocities. Military intervention should be seen as a last resort. Moreover, the goal must always be attainable, and the use of force must be proportional and in line with to the Fourth Geneva Convention regarding the treatment of non-combatants. Thus only in truly exceptional circumstances, to avoid a humanitarian catastrophe and where there is an overwhelming majority support of Security Council

member states, should military intervention be authorised, even if such an intervention is obstructed by a veto-wielding member of the Security Council.¹

To be clear, this report does not call for a prohibition on the use of all explosive weapons in populated areas. But IKV Pax Christi wholeheartedly lends its support to all efforts to protect civilians, including efforts to minimize use of explosive weapons in populated areas by getting reliable data, starting a discourse and to stigmatize the use of explosive weapons in populated areas as a means to *restrict* such a use of these armaments. This report is addressed as much to states and other users as it is to other actors in the international community such as non-governmental organizations. Many contemporary armed conflicts revolve around attaining the support of the civilian population, as embodied by the oft-used phrase ‘winning hearts and minds’. In such a context, placing restrictions on the use of explosive weapons in populated areas is not only a legal and moral duty, but also in the best strategic interest of the state. Because advocacy groups, international organizations and states share a common goal in regard to the problem of explosive violence, addressing this issue can and should take the form of a cooperative effort that includes all of these stakeholders.

1 For more information, see IKV Pax Christi and Cordaid, ‘Assisting in the protection of civilians, The Dutch Armed Forces on its way to 2030’, April 2010. http://www.ikvpaxchristi.nl/files/Documenten/Thema%27s/Defensieverkenningen_engels.pdf.



A view of a damaged house on Yeonpyeong Island South Korea, 26 November 2010. South Korea says it has returned fire after North Korea fired dozens of artillery shells at one of its border islands, killing two South Korean marines, and injuring other soldiers and killing two civilians.
© EPA/Jeon Heon-Kyun

ii Glossary

| | |
|--------|---|
| AOAV | Action On Armed Violence |
| CCM | Convention on Cluster Munitions (2008) |
| CCW | Convention on Certain Conventional Weapons (1980) |
| ICRC | International Committee of the Red Cross |
| IED | Improvised Explosive Device |
| IHL | International Humanitarian Law |
| IO | International Organization |
| ISAF | International Security Assistance Force |
| NGO | Non-Governmental Organization |
| UN | United Nations |
| UNAMA | United Nations Assistance Mission in Afghanistan |
| UNIDIR | United Nations Institute for Disarmament Research |
| US | United States |
| UXO | Unexploded Ordnance |

1 Introduction

IKV Pax Christi is a Dutch peace organization working in over 20 conflict areas. Together with our local partners, we initiate and support local and international peace and human rights initiatives. Urged by our experiences in various conflict areas and confronted by the humanitarian harm caused by armed conflict, IKV Pax Christi also actively engages in international political and diplomatic endeavors to enhance the protection of civilians.

Since the Mine Ban Treaty (MBT, 1997) and the Convention on Cluster Munitions (CCM, 2008), the cooperation between states and civil society has received more attention. IKV Pax Christi believes in the strength and added value of this so-called “civil diplomacy” model. States have the power to set the agenda, influence the international debate, and promote the protection of human rights and human dignity through international treaties and implementation of national laws. Civil society can create moral outrage, feed the debate with experiences and reports from the field, bring various actors together, and give a voice to those most affected. This combination of expertise, roles and responsibilities of the different actors has proven to be a powerful one, and is a promising development for future humanitarian debates. In its recent report *Attached to the World: On the Anchoring and Strategy of Dutch Foreign Policy* the Dutch Scientific Council for Government Policy (WRR) recognizes possibilities of this kind of hybrid cooperation. “...[I]n addition to their state-based focus, ministers, state secretaries and officials need to adopt an approach that links up to the network society populated not only by state actors, but also by non-state actors.

Cooperation with NGO's, transnational corporations and sub-state actors calls for a way of working that is no longer based on directing, but on facilitating and connecting.”²

IKV Pax Christi believes that the MBT and the CCM are both historical achievements that have effectively increased the protection of civilians in armed conflict.³ The birth of these treaties also raises questions with regard to the scope and parameters of single-weapon treaties. Does singling out one specific weapons category legitimize the use of other weapons? Isn't there sometimes selective outrage? Are we as peace and human right activists at IKV Pax Christi maybe sometimes accepting the unacceptable, as terms as collateral damage slowly enter our vocabularies? Shouldn't we, in addition to single weapon categories, also look at the impact of armed violence on citizens as a whole? Should we not focus on the impact of single weapons categories as well as broaden the debate on ‘protection of civilians’? There is a widespread ‘acceptance’ of explosive weapons within the context of armed conflict, which in turn creates a phenomenon that we refer to as the ‘moral outrage gap’. Both humanitarian actors and the media tend to treat this pattern of violence as ‘normal’ and are

2 WRR (Scientific Council for Government Policy) ‘Aan het buitenland gehecht, over verandering en strategie van Nederlands buitenlandbeleid’ (‘Attached to the World: On the Anchoring and Strategy of Dutch Foreign Policy’), Amsterdam University Press, 2010, 20.

3 See for example IKV Pax Christi, ‘Clusterweapons Necessity or Convenience’ 2005 or IKV Pax Christi, ‘The Devil is in the Detail: Dutch Position on Cluster Munitions’, 2007. To be downloaded at <http://www.stopclustermunitie.nl>.

instead drawn toward singling out ‘unconventional’ types of weapons, such as white phosphorous or dense inert metal explosives (DIME). However, explosive weapons cause a distinct form of humanitarian harm to civilians, especially when used in populated areas. Through the projection of a blast wave and shrapnel, explosive weapons indiscriminately damage the area around the point of detonation. This inherently means that explosive weapons are indiscriminate and often cause unacceptable levels of humanitarian harm. In its work in for instance Iraq, Pakistan, Kosovo, Sudan, Lebanon, Palestine and Israel, IKV Pax Christi witnesses the humanitarian harm caused by the use of explosive weapons in populated areas.

We are therefore pleased that this issue is now on the agenda of the United Nations, of certain states, of many IO’s and other actors. It is a discourse whose time has come. In a modest way, we will try to contribute to this discourse. IKV Pax Christi will initiate and support the debate both in The Netherlands and worldwide. We will publish a set of policy briefs on the issue of explosive weapons in populated areas. This report is the start of this new initiative; more reports on explosive weapons and International Humanitarian Law (IHL), various case studies etc. will be published in 2011.

Through this initiative, we will try to find ways to protect citizens against the use of explosive weapons. Raising consciousness about the humanitarian impact of explosive weapons could be an important first step towards strengthening IHL’s ability to more effectively address the problem of explosive weapons’ use in populated areas.

Jan Gruiters
Director IKV Pax Christi

2 Explosive weapons: defining the humanitarian problem

“A common feature of explosive weapons is that they are indiscriminate within their zones of blast and fragmentation effect, which makes their use highly problematic in populated areas”.

— Ban Ki-moon, United Nations Secretary-General

The use of explosive weapons in populated areas is increasingly seen as a matter of grave humanitarian concern. In November 2010, the UN Secretary-General published his latest report to the UN Security Council on the protection of civilians in armed conflict. In this report the SG expanded on the language used in 2009 and noted with reference to data collected in a range of contexts, including Afghanistan, Iraq, Somalia and Yemen that explosive weapons use in populated areas causes “substantial and ongoing civilian suffering”. The Secretary-General also for the first time formulated a number of recommendations to address this issue. Among other things, he urged states, UN actors and international and non-governmental organizations to consider the issue of explosive weapons closely, including by supporting more systematic data collection and analysis of the human costs of their use. This is something he considers “essential to deepening our understanding of the humanitarian impact of such weapons and to informing the development of policy an practice that would strengthen the implementation of international humanitarian and human rights law.”

The Secretary-General also urged increased cooperation by states in collecting and making available information on civilian harm resulting from the use of explosive weapons, and in issuing policy statements that outline the conditions under which explosive weapons might be used in populated areas.⁴

On 22 November 2010, the Secretary-General’s report was discussed at a UN Security Council open debate on the protection of civilians. At least eight representatives of states and international organizations, including of Australia, Austria, Costa Rica, Mexico, Norway, Slovenia and Switzerland, as well as of the European Union stated that they shared the concern of the Secretary-General over the threat posed by explosive weapons in populated areas. Many supported his recommendations for further analysis, data collection and research into the humanitarian impact of explosive weapons use in populated areas, with a view to enhance civilian protection and the implementation of international humanitarian law.⁵

Earlier, in July 2010, the UN Under-Secretary General for

Humanitarian Affairs John Holmes stated that ‘the use of “ordinary” explosive weapons in populated areas also repeatedly causes unacceptably high levels of harm to civilians.’⁶ And in November 2010 the UN Deputy SG stated at the First Meeting of States Parties to the Convention on Cluster Munitions in Laos PDR that the use of explosive weapons in populated areas causes profound suffering to civilians”.⁷

Reporting to the Security Council on the protection of civilians in armed conflict in 2009, the UN Secretary-General touched upon the ‘indiscriminate and severe humanitarian impact’ that results from explosive weapons’ use in urban environments.⁸ Ban Ki-moon, UN Secretary-General states in 2009: ‘I am increasingly concerned at the humanitarian impact of explosive weapons, in particular when used in densely populated areas.’⁹

But not only states and the United Nations are expressing concerns. In September 2009, over 340 NGOs issued a call to the Security Council that, among other things, urged states to look critically at the use of explosive weapons in populated areas.¹⁰ Also in 2009, the International Committee of the Red Cross (ICRC) commented in its annual report on ‘the potentially devastating humanitarian consequences of military operations conducted in densely populated areas, especially when heavy or highly explosive weapons are used.’¹¹

4 UN Secretary General, Report of the Secretary-General on the protection of civilians in armed conflict, 11 November 2010, (S/2010/579).

5 <http://www.unmultimedia.org/tv/webcast/2010/11/security-council-meeting-protection-of-civilians-in-armed-conflict.html>.

6 John Holmes, ‘Statement by John Holmes, Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator’, (Security Council meeting 6354 S/PV.6354, 7 July 2010) 6. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20SPV6354.pdf>. Last visited 6 October 2010.

7 <http://www.un.org/apps/dsg/dsgstats.asp?nid=248>, last visited December 8th 2010.

8 UN Secretary General, ‘Report of the Secretary-General’, 8.

9 UN Secretary General ‘Report of the Secretary-General on the Protection of Civilians in Armed Conflict’, (United Nations Security Council: S/2009/277, 29 May 2009), (S/2009/277).

10 ‘NGO Declaration: Dismantling for Peace and Development’, Annex to the letter dated 18 September 2009 from the Permanent Representative of Mexico to the United Nations addressed to the President of the Security Council, (Security Council Meeting S/2009/477, 22 September 2009).

11 International Committee of the Red Cross, ‘Annual Report 2009’, (ICRC 2009) 8. <http://www.icrc.org/eng/resources/annual-report/index.jsp>. Last visited 7 October 2010.

1972

'Bloody Friday' bombing*

Location

Belfast, Northern Ireland

Civilian casualties

7 killed and 130 injured

Responsible party

Provisional Irish Republican Army (PIRA)

Explosive weapon

19 improvised explosive devices

During the afternoon of Friday the 21st of July, 1972, the Provisional IRA set off 19 separate bombs in downtown Belfast. Over the course of approximately one hour, explosives were detonated that had been planted in cars, suitcases, public transport stations, bridges and shops. The sustained attack left 7 civilians dead, 130 injured, and caused extensive damage to houses, hotels, pubs, vehicles, stores and infrastructure. The public outrage that followed the bombings presented the British Army with an opportunity to launch a massive operation to clear out PIRA strongholds in Belfast and Londonderry. By making use of the lapse in public support for the PIRA, the British Army was able to overcome the paralyzing effects of its own delegitimization following the Bloody Sunday disaster which had occurred only months earlier. In this sense, the Bloody Friday incident illustrates that it is not just states that are susceptible to intense public criticism resulting from the use of explosive weapons against civilians.

* Fionnuala McKenna, 'CAIN: Events: Bloody Friday – Northern Ireland Office News-Sheet on 'Bloody Friday'. <http://cain.ulst.ac.uk/events/bfriday/nio/nio72.htm>. Last visited 19 October 2010; Peter R. Neumann, *Britain's Long War: British Strategy in the Northern Ireland Conflict, 1969-98* (Houndmills: Palgrave Macmillan 2003), 78-80.

Organizations such as Landmine Action (recently renamed Action On Armed Violence, referred to in this report as AOAV) and the United Nations Institute for Disarmament Research (UNIDIR) have played important roles by highlighting the severity of this problem. IKV Pax Christi is dedicated to increasing human security and promoting the protection of civilians in conflict areas and is concerned about the grave threat that explosive weapons pose to civilian populations. In order to better protect civilians, this problem must first be clearly defined and the grave effects of the use of explosive weapons in populated areas must be documented and examined. What exactly are explosive weapons, who uses them and why does their use in armed conflicts raise such pressing humanitarian concerns? Outlining the extent of the problem by answering these questions is the main objective of this chapter.¹²

2.1

What are explosive weapons?

The category of explosive weapons is a broad one. Grenades and improvised explosive devices such as vehicle or person-borne bombs are as much part of it as missiles, cluster munitions, mortar bombs, landmines, rockets, projectiles and weapons intended for detonation under water such as naval mines and torpedoes. Despite the large variations in effect, design, function and means of delivery, all of these weapons share certain basic characteristics.¹³

Explosive weapons:

- » Contain at least one high-explosive substance.
- » Produce a blast wave, project shrapnel and create heat when detonated.
- » Injure or kill people and damage objects present in the area around the point of detonation.
- » May malfunction upon use, leaving unexploded ordnance (UXO).

12 See: <http://www.landmineaction.org>, <http://aoav.org.uk> and <http://www.unidir.org>. Last visited 6 October 2010.

13 UNIDIR, 'Discourse on Explosive Weapons (DEW) Project Symposium Report', (UNIDIR Resources, May 2010) 2. <http://www.unidir.org/pdf/activites/pdf4-act527.pdf>. Last visited 6 October 2010; Richard Moyes, *Explosive Violence: the Problem of Explosive Weapons* (London: Landmine Action 2009), 4, 11; UNIDIR, 'Background Paper No 1 of the Discourse on Explosive Weapons (DEW) project', (UNIDIR Resources, April 2010) 1. <http://www.unidir.org/pdf/activites/pdf4-act499.pdf>. Last visited 6 October 2010.

Despite these shared technical characteristics, explosive weapons do not yet constitute a distinct category of weapons as recognized by any international body or treaty. Unlike for example, cluster bombs or anti-personnel mines, the broader family of explosive weapons is not explicitly treated as a distinct category in international humanitarian law (IHL). The UN Convention on Certain Conventional Weapons (CCW) comes close to this through common provisions relating to explosive ordnance (Protocol V) and landmines and IEDS (Amended Protocol II). This lack of *de jure* recognition is a topic which will be expanded upon in chapter three. Most relevant to this part of the report is the fact that the absence of ‘official’ recognition has not stood in the way of states’ *de facto* treatment of explosive weapons as belonging to a very specific category of armaments.¹⁴

2.2 Who uses explosive weapons and when?

States are by no means the only users of explosive weapons. Nevertheless, states possess the industrial, scientific and economic means necessary to develop, produce and sell (explosive) weapons on a large scale. As a consequence, not only do states have considerable stockpiles of (explosive) weaponry, they also enjoy a virtual monopoly on advanced means of delivery such as aircraft, submarines, ballistic missiles and high-tech artillery systems.¹⁵ Although this paper will mainly focus on states’ use of explosive violence, it is important to note that throughout recent history, non-state actors have made widespread use of armaments belonging to this category, benefiting from the dissemination of scientific know-how and practical engineering skills, as well as the proliferation of (explosive) weapons through international arms trading and state patronage of rebel movements. In nineteenth-century Russia, revolution-

aries used home-made explosives to assassinate Tsar Alexander II. In 1914, Bosnian-Serb assassins used both explosives and firearms to murder Austria’s Archduke Franz Ferdinand. During the 1970s and 1980s, the Irish Republican Army (IRA) received various weapon shipments from Libya which included anti-aircraft missiles and several tonnes of high-explosive material. In the current conflict in Afghanistan, Western forces and their Afghan allies face opponents who make widespread use of ‘improvised explosive devices’ (IEDs). It goes without saying that civilian casualties have been part and parcel of non-state actors’ use of explosive violence.¹⁶

This small set of examples is meant to underline that states are by no means the only parties responsible for the humanitarian consequences of explosive violence. However, since states are supposed to have a monopoly on the use of explosive violence, can be held accountable by other (state) actors for their use of violence, and should report on this use, this policy brief focuses mainly on state actors. Additionally, it is also revealing in terms of defining the problem. As AOAV has pointed out, virtually every government categorically prohibits the private ownership of explosive weapons. Even in those countries where citizens have the legal right to own and carry firearms, the private procurement of explosive armaments is strictly forbidden. What is even more interesting is that states tend not to use explosive weapons in domestic policing situations, with the exception of non-lethal devices such as flash-bang grenades.¹⁷ The reason for this is that governments, and especially democratic ones, can be held accountable by their citizens. Although the impact of explosive weapons is foreseeable, the effects of the

14 John Borrie, Maya Brehm, Silvia Cattaneo and David Atwood, ‘Learn, Adapt, Succeed: Potential Lessons from the Ottawa and Oslo Processes for Other Disarmament and Arms Control Challenges’, *Disarmament Forum* 11:1-2 (2009) 23; Moyes, *Explosive Violence*, 13, 58.

15 Moyes, *Explosive Violence*, 17-18, 50; Anup Shah, ‘World Military Spending’, (Global Issues, 7 July 2010). <http://www.globalissues.org/article/75/world-military-spending#WorldMilitarySpending>. Last visited 7 October 2010; Anup Shah, ‘The Arms Trade is Big Business’, (Global Issues, 5 October 2010). <http://www.globalissues.org/article/74/the-arms-trade-is-big-business>. Last visited 7 October 2010.

16 Gus Martin, *Understanding Terrorism: Challenges, Perspectives, and Issues* (Thousand Oaks: Sage Publications 2003), 144; Vladimir Dedijer, *The Road to Sarajevo* (New York: Simon and Schuster 1966), 12; *Operation Banner: an Analysis of Military Operations in Northern Ireland*. Ministry of Defense (Army code 71842: 2006), 3-7; UNAMA, ‘Afghanistan Mid Year Bulletin on Protection of Civilians in Armed Conflict, 2009’, (UNAMA Human Rights Unit, July 2009) 1, 7. <http://unama.unmissions.org/Portals/UNAMA/human%20rights/09july31-UNAMA-HUMAN-RIGHTS-CIVILIAN-CASUALTIES-Mid-Year-2009-Bulletin.pdf>. Last visited 7 October 2010.

17 The fact that during some international police missions explosive weapons are used, underlines the fact that accountability by its own state and citizens is crucial.

1980 Bologna train station bombing*

Location

Bologna, Italy

Civilian casualties

85 killed and 180 – 200+ injured

Responsible party

Nuclei Armati Rivoluzionari
(Armed Revolutionary Nuclei)

Explosive weapon

improvised explosive device

On August 2nd, 1980, Italian neo-fascist terrorists detonated a bomb at Bologna's central train station. The explosive device had been placed in a waiting room which on that Saturday morning was packed with travellers. The bomb contained a mixture of various high-explosive compounds and the attack's lethality was increased by the fact that the primary explosion caused the roof of the waiting room to collapse. In total, 85 people were killed and sources put the number of injured at over 200. At the time, the incident was described as 'Europe's worst act of terrorism since World War II.'^{**}

* Martin, *Understanding terrorism*, 175; David R. Deropolous and Corinna Amendola, 'Sons of Darkness: Bologna, 1980', *The American in Italia* (September 2005) 1. <http://www.theamericanmag.com/article.php?article=251&p=full>. Last visited 19 October 2010.

** 'Italians Issue Five Warrants in 1980 Bombing in Bologna', *The New York Times* (12 September 1982).

use is difficult to predict, and the civilian casualties that could arise from their use in a domestic setting would pose a grave threat to the state's legitimacy.¹⁸

Generally it is only in special circumstances that states will deviate from this marked reluctance to use explosive violence against their own citizens, for example when a dangerous insurrectionist movement threatens the state's authority. But when engaged in conflicts with people whose ability to hold the state accountable is virtually nonexistent, governments appear to be considerably less reluctant to use explosive weapons. Put differently, when fighting against foreign populations or on foreign soil, states no longer view the use of explosive weapons as being unacceptable. The existence or absence of a 'contract of legitimacy' between government and people appears to be a prime determinant of whether or not explosive weapons will be used during an armed conflict. Another important variable that the AOV report describes in this regard is the nature of the ends being pursued. When the state employs force to safeguard the lives or interests of its citizens, it is much more likely to refrain from using explosive violence than when it is pursuing matters of state interests such as territorial disputes.¹⁹

Taken together, the prohibition on the private ownership of explosive weapons and states' widespread reluctance to use such weapons in domestic settings strongly imply that governments do indeed see 'explosive weapons' as constituting a distinct category of armaments. Not only is this *de facto* recognition a useful starting point for *de jure* recognition, it also provides a strong moral basis for holding states accountable when they use explosive violence. Why should a form of violence that is seen as completely unacceptable when applied to a state's own citizens be any less so when the victims reside in a foreign country?

18 Moyes, *Explosive Violence*, 12-13, 46-49; Borrie et al., 'Learn, Adapt, Succeed', 23; UNIDIR, 'Background Paper No 1', 4.

19 Rappert, Moyes, 'Enhancing the protection of civilians from armed conflict: precautionary lessons', *Medicine, Conflict and Survival*, 2010, Moyes, *Explosive Violence*, 12-13, 48-50; UNIDIR, 'Background Paper No 1', 4; Richard Moyes, 'Explosive Violence in Areas of Civilian Concentration', (Presentation transcript, 28 October 2008) 3-4. <http://explosiveviolence.files.wordpress.com/2008/11/explosive-violence-in-areas-of-civilian-concentration-presentation-28-nov-08.pdf>. Last visited 7 October 2010.

Explosive weapons are used by states as well as non-state actors. Although the latter group of users has frequently deployed these means during terrorist attacks or other relatively isolated acts of political violence, the usage of explosive weapons is most common attributed to and/or associated with the 'special circumstances' attributed with armed conflicts. Although any and every armed conflict is a terrible and regrettable thing in its own right, what warrants the international community's special focus on the use of explosive violence in populated areas? What makes this issue such an especially pressing humanitarian problem?²⁰

2.3 The humanitarian impact of explosive weapons

In a recent opinion piece in the *New York Times*, Charli Carpenter wrote that 'collateral damage may now be a more serious humanitarian issue than war crimes in some conflict zones.'²¹ Although strongly worded, this statement does go to the heart of the problem with explosive weapons. It is not their use *per se*, but rather their tendency to cause indiscriminate destruction which may result in unacceptable levels of civilian harm that forms the key humanitarian dilemma. This problem is greatly compounded when these weapons are used in populated areas. Therefore, the relatively indiscriminate effect of explosive weapons is central to their ability to pose a key humanitarian threat, especially when used in populated areas.²²

Of course, the increased availability of precision-guided munitions means that armed forces resort to carpet-bombing techniques far less frequently than in previous decades, which in itself is a significant

20 UNIDIR, 'Discourse on Explosive Weapons', 2; Moyes, *Explosive Violence*, 25; Borrie et al., 'Learn, Adapt, Succeed', 23-24.

21 Charli Carpenter, 'Collateral Damage Control', *New York Times* (11 August 2010). <http://www.nytimes.com/2010/08/12/opinion/12iht-edcarpenter.html>. Last visited 8 October 2010.

22 UNIDIR, 'Background Paper No 2 of the Discourse on Explosive Weapons (DEW) project', (UNIDIR Resources, July 2010) 1. <http://www.unidir.org/pdf/activites/pdf10-act499.pdf>. Last visited 8 October 2010; Moyes, *Explosive Violence*, 11, 25; Kimoon, 'Report of the Secretary-General', 8; Brian Rappert and Richard Moyes, 'Enhancing the Protection of Civilians from Armed Conflict: Precautionary Lessons', *Medicine, Conflict and Survival* 26:1 (January-March 2010) 40.

2009 Gerani village airstrike*

Location

Gerani village, Farah Province, Afghanistan

Civilian casualties

64 – 145 killed (estimate) and an unknown number injured

Responsible parties

US aircraft supporting Afghan security forces

Explosive weapon

Several aircraft-delivered bombs and/or missiles

The airstrikes which hit the village of Gerani (also referred to as Granai) on May 4th, 2009, cost the lives of a large number of Afghan civilians. Although the details of the airstrike are disputed and subject to significant controversy, it appears that the US forces involved failed to take sufficient precautions against collateral damage and that they did not adhere to directives specifically drafted to minimize non-combatant casualties. Responding to a call for close air support from beleaguered Afghan security forces, US aircraft repeatedly bombed buildings that were thought to contain Taliban insurgents. Whether through the Taliban's use of civilians as human shields or through targeting errors, many non-combatants lost their lives as a result of the use of high-explosive weapons in a populated area.

* UNAMA, 'Afghanistan Mid Year Bulletin', 13; Jon Boone, Ewen MacAskill and Mark Tran, 'US Air Strikes Kill Dozens of Afghan Civilians', *The Guardian* (6 May 2009). <http://www.guardian.co.uk/world/2009/may/06/us-air-strikes-afghan-civilians>. Last visited 20 October 2010; Mail Foreign Service, '147 People Killed in 'Botched' U.S. Airstrike on Villages, Claim Afghan Government', *The Daily Mail* (8 May 2009). <http://www.dailymail.co.uk/news/worldnews/article-1179011/147-people-killed-botched-U-S-airstrike-villages-claim-Afghan-government.html>. Last visited 20 October 2010; Ben Farmer, 'Wikileaks "to Release Video of US Strike on Afghan Civilians"', *The Sunday Telegraph* (11 April 2010). <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/7579132/Wikileaks-to-release-video-of-US-strike-on-Afghan-civilians.html>. Last visited 20 October 2010; Sabrina Tavernisse, 'U.S. Rejects Afghan Civilian Death Estimate', *The New York Times* (20 May 2009). <http://www.nytimes.com/2009/05/21/world/asia/21afghan.html>. Last visited 20 October 2010.

improvement. However, despite technological developments an overall pattern of unacceptable harm from explosive weapons in populated areas remains; and even precisely targeted explosive weapons are relatively indiscriminate instruments of destruction once they detonate. The increasing frequency of ‘war amongst the people’ in today’s world means that more civilians are at risk during armed conflicts. Not only as the unintended victims of explosive weapon usage against military targets located in populated areas, but also as the strategic objective of the conflict; gaining a population’s support through force, coercion or by winning ‘hearts and minds’ appears to be of central importance in many contemporary armed struggles. The following paragraphs will detail the direct and indirect consequences of explosive weapons’ use in civilian areas, and provide more insights into the actual numbers of deaths and injuries that such incidents can incur.²³

Upon detonation, explosive weapons can injure or kill people and damage or destroy objects present in the area around the target. These constitute the immediate or primary effects of explosive weapons. Secondary effects are the longer-term disruption of vital socio-economic activities caused by, for instance, the destruction of hospitals, markets, power plants and roads. Added to these long-term effects are the dangers posed by UXO which can maim and kill people many years after the conflict has ended and which can deny the use of or access to the areas they contaminate, for instance depriving populations of valuable arable land.²⁴

The primary effects of explosive weapons:²⁵

- » Immediate death of persons in the direct vicinity of the explosion.
- » (Potentially fatal) damage to organs and tissue caused by the blast wave.
- » Propensity to cause a host of (potentially fatal) injuries by explosively projecting weapon fragments and other debris into the body.
- » Indirect death and injury through the post-detonation collapse of buildings, dust inhalation and burn wounds.
- » Destruction of buildings, roads and other infrastructure.

Explosive weapons can cause a variety of more-or-less immediately fatal injuries. Those individuals who survive the primary explosion often suffer severe and complex wounds. Massive blood loss, severed limbs, internal haemorrhaging, organ failure, respiratory problems and brain damage are just some of the injuries that victims may incur. Medical services are often severely taxed to deal with these injuries, especially if the country that experiences the armed violence is poor and resources are limited. Additionally, the physical destruction wrought by the use of explosive weapons can prevent swift access to people in need, further complicating the provision of an effective medical response.²⁶

23 UNIDIR, ‘Discourse on Explosive Weapons’, 2; Rupert Smith, *The Utility of Force: the Art of War in the Modern World* (London: Penguin Books 2006); Ki-moon, ‘Report of the Secretary-General’, 5; UNAMA, ‘Afghanistan Mid Year Bulletin’, 3.

24 UNIDIR, ‘Background Paper No 2’, 1-2; UNIDIR, ‘Discourse on Explosive Weapons’, 2; Richard Moyes, ‘IEDs and Explosive Violence – Framing the Humanitarian Problem’, (Presentation transcript, 20 April 2009) 4-6. <http://www.landmineaction.org/resources/LMA%20presentation%20on%20IEDs%20to%20the%20UN%20CCW.pdf> Last visited 8 October 2010; Caecilie Buhmann, ‘The Direct and Indirect Costs of Explosive Violence: Recognition and Documentation Need to Translate into Policy Action and Political Support’, *BMJ* 339 (September-October 2009) 761.

25 International Campaign to Ban Landmines, ‘What are cluster munitions?’. <http://www.icbl.org/index.php/icbl/Problem/Cluster-Munitions/What-are-Cluster-Munitions>. Last visited 27 October 2010; International Campaign to Ban Landmines, ‘What is a landmine?’. <http://www.icbl.org/index.php/icbl/Problem/Landmines/What-is-a-Landmine>. Last visited 27 October 2010; Moyes, *Explosive Violence*, 28-29; Moyes, ‘IEDs and Explosive Violence’, 4-5; Christopher Rogers, ‘Civilians in Armed Conflict: Civilian Harm and Conflict in Northwest Pakistan’, (Campaign for Innocent Victims in Conflict 2010) 33-34. <http://www.civicworldwide.org/storage/civicdev/documents/civic%20pakistan%202010%20final.pdf>. Last visited 21 October 2010.

26 Coupland, ‘Wound Ballistics: an introduction for health, legal, forensic, military and law enforcement for professionals’ or Coupland, ‘The “Solferino cycle” and documenting the humanitarian effects of explosive weapons’, <http://explosiveweapons.info/2010/06/15/documenting-the-humanitarian-effects-of-explosive-weapons/>.



Aerial view taken on 15 June 1999 showing
Pristina's central post office destroyed by
NATO bombing on April 7 1999. © ANP

The secondary (long-term) effects of explosive weapons:²⁷

- » Victims may suffer permanent physical disabilities or traumatic brain injury.
- » Victims may suffer enduring psychological trauma such as Post-Traumatic Stress Syndrome (PTSD)
- » Damage to socio-economic infrastructure such as houses, schools, power plants, markets, hospitals, roads and railway systems and the drinking-water supply.
- » Unexploded ordnance can cause deaths and injuries years after hostilities have been concluded and can deny access to valuable land.

What this summary makes clear is that explosive weapons have a humanitarian impact that extends far beyond their actual moment of use in conflict. Individuals who survive such incidents, or who have to spend years living under the threat of explosive violence, may suffer debilitating injuries and severe psychological trauma. First and foremost, this is a tragedy for the people so affected. But adequately assisting these victims can impose large strains on societal resources, provided that these resources exist in the first place. Furthermore, explosive violence can have detrimental socio-economic consequences. Besides the acute humanitarian problems arising from, for instance, lack of drinking water, a faltering power supply or destroyed market places, this kind of damage can deprive civilians of their socio economic rights such as education and also impose huge economic and development costs on afflicted countries - costs that are not limited to reconstruction efforts, but which also result from the expensive and time-consuming task of removing UXO contamination.²⁸

27 Rae McGrath and Eric Stover, 'Injuries from land mines', *BMJ* 303 (December 1991) 1492; Robin M. Coupland and Adriaan Korver, 'Injuries from antipersonnel mines: experience of the International Committee of the Red Cross', *BMJ* 303 (December 1991) 1509-1512; Daya J. Somasundaram and Kea Kiri Renol, 'The psychological effects of landmines in Cambodia', *Medicine, Conflict and Survival* 14:3 (July 1998) 219-236; Moyes, *Explosive violence*, 29-38; UNIDIR, 'Background Paper No 2', 1-2; Rogers, 'Civilians in Armed Conflict', 33-35.

28 Madelyn Hsiao-Rei Hicks et al., 'The Weapons that Kill Civilians - Deaths of Children and Noncombatants in Iraq, 2003-2008', *The New England Journal of Medicine* 360:16 (April 2009) 1585; Rogers, 'Civilians in Armed Conflict', 29-33. Moyes, *Explosive Violence*, 29-31.

The grave threat that explosive weapons pose to civilians caught in armed conflicts is underlined by a recent study conducted on behalf of AOV. Described in detail in AOV's report, a succinct summary will suffice here. Data gathered from English language news sources between April and September 2006 leads AOV to several observations, the most relevant of which are:

- » Explosive violence is geographically widespread but particularly intense in a limited number of countries.
- » Civilians comprise the majority of those killed and wounded by explosive violence; 69 and 83 percent respectively (taking into account populated as well as relatively unpopulated areas).
- » When explosive weapons are used in populated areas the percentage of civilians killed and injured rises to 83 and 90 percent respectively.²⁹

The AOV report is careful to attach some qualifications to these findings and to underline the necessity of further research. But even if this data is taken as a rough indicator of the effects of explosive violence on non-combatants, the results are still shocking. As the findings published by AOV show, not only do explosive weapons cause a high level of casualties among civilians in general, in populated areas civilians constitute the vast majority of those killed and wounded.³⁰

2.4 Conclusions

From grenades and IEDs to laser-guided bombs, explosive weapons share certain basic characteristics. The argument in favour of viewing explosive weapons as a distinct category of armaments is further strengthened by states' *de facto* recognition of such a category. By prohibiting the private ownership of these armaments and through exhibiting a marked reluctance to use them in domestic operations, governments indicate that they view explosive weapons as constituting a distinct group of arms. This provides perspectives for advocacy efforts aimed at challenging the use of explosive weapons, efforts which are all the more necessary considering that the data collected by AOV clearly indicates that the use of explosive weapons in populated areas poses an unacceptable danger to civilians and constitutes a key humanitarian concern.

29 Moyes, *Explosive Violence*, 22-25.

30 Ibidem, 25; Moyes, 'IEDs and Explosive Violence', 2-3.

2002

Passover Massacre *

Location

Netanya, Israel

Civilian casualties

30 killed and 140 injured

Responsible party

Hamas

Explosive weapon

Person-borne improvised explosive device

On the evening of March 27th, 2002, a HAMAS terrorist walked into the Park Hotel in Netanya and blew himself up amid a room full of dinner guests. At the time of the attack the hotel was packed with diners celebrating the beginning of the Jewish Passover holiday with a special festive meal. The large numbers of casualties made the Passover Massacre one of the deadliest terrorist attacks of the second Intifada. In its wake, the Israeli government declared a state of war, called up approximately 20,000 reservists and initiated Operation Defensive Shield, an intensive 3 week military campaign which led to the reoccupation of large parts of the West Bank.

* Israel Ministry of Foreign Affairs, 'Passover Suicide Bombing at Park Hotel in Netanya'. http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2002/3/Passover%20suicide%20bombing%20at%20Park%20Hotel%20in%20Netanya. Last visited 20 October 2010; Sergio Catignani, 'The Security Imperative in Counterterror Operations: the Israeli Fight Against Suicidal Terror', *Terrorism and Political Violence* 17:1 (February 2005) 256; Sergio Catignani, *Israeli Counter-Insurgency and the Intifadas: Dilemmas of a Conventional Army* (London: Routledge 2008), 110-111.

3 Explosive weapons: Origins of the debate and the role of international law

‘No rule in IHL, nor any weapons treaty, specifically regulates the use of explosive weapons in populated areas or explicitly requires documentation of the impact of these attacks.’³¹

³¹ UNIDIR, ‘Background Paper No 2’, 4.

International Humanitarian Law applies to armed conflicts and provides certain reference points for assessing if explosive weapons have been used illegally during an armed conflict.³² Three important concepts in this regard are those concerning proportionality, distinction and precaution. Are the expected civilian casualties proportionate to the anticipated military gains? Can the means of warfare employed distinguish between civilians and civilian objects on the one hand, and military targets, on the other? And did the warring parties take sufficient precautions to avoid collateral damage? By taking a closer look at the development of these principles and the role of arms control treaties, this chapter aims to clarify the origins of the explosive weapons debate and to assess the value of existing normative frameworks in addressing this pressing humanitarian concern.³³

3.1 Origins of the explosive weapons debate

Experts like Robin Coupland from the ICRC wrote several times about the impact of explosive weapons on civilians. But a wider debate on explosive violence started only recently.³⁴

Interest in this subject seems to stem from three main sources; the hard agenda-setting work of individuals such as Richard Moyes and organizations such as UNIDIR, the influence of international humanitarian law on the conduct of armed conflict, and the successes of recent international treaties prohibiting the production, sale and use of specific weapons systems.

The influence of the latter two developments will form the main focus of this chapter.³⁵

32 States party to AP I (art. 36) have a pre-use obligation to check whether use of a weapon would be in accordance with international law, particularly IHL.

33 UNIDIR, 'Discourse on Explosive Weapons', 3.

34 Robin Coupland, 'The Effects of Weapons and the Solferino Cycle: Where Disciplines Meet to Prevent or Limit the Damage Caused by Weapons', *BMJ* 319 (October 1999).

35 Not only have Moyes and UNIDIR produced a large number of papers, presentations and reports, these documents are consistently cited in other works that contribute to the discussion on explosive weapons.

3.2 International humanitarian law and explosive weapons

Central to international humanitarian law, and the rules of conduct of hostilities, is the concept of proportionality. "*The [military] gain expected must outweigh the expected collateral casualties and damage, or the action must not be undertaken.*"³⁶ Another relevant development in IHL that originated around the same time is the norm against indiscriminate attacks. The Hague Conventions prohibit the 'bombardment' of undefended dwellings, be they towns or single buildings. Attention for possible civilian casualties arising from (aerial) bombardment was a recurring theme during the Interbellum period. Notably, the conventions and resolutions drafted during this period started to distinguish between the intentional targeting of civilian objects and attacks aimed at military targets which also caused excessive civilian harm. Increasingly, both were labelled as constituting an indiscriminate form of attack.³⁷

Unfortunately, these efforts to protect civilians from bombardment proved grossly inadequate. During World War Two, civilian populations were subjected to explosive violence on a hitherto unforeseen scale as both the intended targets of 'strategic bombardment' campaigns as well as the unintended victims of attacks against military-industrial objects. However, it took many more civilian deaths at the hands of explosive weapons before steps were taken to enhance the protection of non-combatants in international law. In 1977, two years after the end of the Vietnam War, Additional Protocol I to the Geneva Conventions was signed. Article 51 of this Protocol clearly states the prohibition on indiscriminate attacks, defined as attacks that do not differentiate between military targets and civilian objects, and which cause civilian casualties and property damage out of proportion with the expected military advantages. Additionally, the 1977 Protocol also requires combatants to avoid and minimize civilian casualties and damage to civilian objects.³⁸

36 Art 51(5)(b) AP I and art. 57(2)(b) AP I.

37 Bring, 'Regulating Conventional Weapons', 277; Moyes, *Explosive Violence*, 58-59; Moyes, 'IEDs and Explosive Violence', 7.

38 Protocol I, article 48, states, "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives

2007 Battle of Chora*

Location

Chora, Uruzgan Province, Afghanistan

Civilian casualties

60 – 70 killed and 50 – 100 injured (estimates)

Responsible parties

ISAF forces and Taliban militants

Explosive weapon

ISAF airstrikes and artillery barrages

From the 16th to the 19th of June 2007, ISAF forces and their Afghan allies fought a fierce battle with the Taliban for control of the Chora district. After coming under heavy attack by Taliban forces who had already managed to capture several towns and checkpoints in the area, Dutch troops responded with airstrikes and artillery attacks. By the 20th of June, the ISAF counteroffensive had been successful and control of the district was regained. However, the use of explosive weapons in populated areas led to a considerable number of civilian casualties. While a UN report acknowledges that ISAF forces did not commit serious violations of IHL, it also criticizes the heavy-handed use of airstrikes and artillery. General Dan McNeill, commander of ISAF forces at the time of the battle, similarly expressed concern that the Dutch use of artillery during the fighting had not been sufficiently discriminate. Although Taliban militants committed gross violations of IHL and murdered numerous civilians during the operation, the UN report states that the majority of the non-combatant victims fell to ISAF fire. Collateral damage caused during the battle of Chora, as well other incidents like it, poses a significant threat to the legitimacy of the NATO and UN missions in Afghanistan.

* Tom Koenigs and Sima Samar, 'AIHRC and UNAMA Joint Investigation into the Civilian Deaths Caused by the ISAF Operation in Response to a Taliban Attack in Chora District, Uruzgan on 16th June 2007', 1-15. <http://www.trouw.nl/redactie/doc/chora.pdf>. Last visited 20 October 2010; George Marlet, 'VN: Burgerdoden door Nederlands Vuur' ('UN: civilian casualties by Dutch fire'), *Trouw* (17 October 2007). <http://www.trouw.nl/nieuws/nederland/article1485590.ece>. Last visited 20 October 2010; "Voortgang Missie Hing Af van Chora" ('Continuation of mission depended on Chora'), *NRC Handelsblad* (28 June 2007). http://www.nrc.nl/nieuwsthema/uruzgan/article1812070.ece/Voortgang_missie_hing_af_van_Chora_. Last visited 20 October 2010.

In short, developments in international humanitarian law have given rise to several important concepts; the requirement to maintain a proportionate relationship between humanitarian concerns and expected military gains, the prohibition on indiscriminate attacks, and combatants' obligation to take precautions to avoid civilian casualties. These principles of proportionality, distinction and precaution have all contributed to the creation of a strong normative framework that protects civilians during armed conflict. This framework needs to be interpreted narrowly and implemented firmly in order to have a real impact on the protection of civilians during armed conflict. Compliance with IHL is often evaluated on an ad-hoc basis (via Tribunals for instance) and holding actors accountable is frequently very difficult. The rules outlined above have unfortunately been proven to be subject to a wide variety of interpretations. Sometimes these rules are so loosely interpreted that their implementation does no justice to their aim: to protect non combatants during conflicts. Does 'bombardment' cover explosive weapons in general or just aerial attacks? Who decides when force is used proportionately? At what point have the warring parties taken sufficient precautions to minimize harm to civilians? How to usefully distinguish between valid military targets and civilian objects in conflicts that increasingly involve non-state actors who operate out of civilian areas?³⁹

A central challenge for IHL from the perspective of this report is that it does not yet explicitly recognize explosive weapons as constituting a distinct category of armaments. In part, this could be related to the popular perception that these weapons seldom constitute a cause of excessive harm to civilian populations distinct from the wider circumstance of conflict. There is a widespread 'acceptance' of explosive weapons within the context of armed conflict, which, in turn, creates a phenomenon that we refer to as the 'moral outrage gap'.

and accordingly shall direct their operations only against military objectives." Moyes, *Explosive Violence*, 60-61; UNIDIR, 'Background Paper No 1', 2; Rappert and Moyes, 'Enhancing the Protection of Civilians', 24; UNIDIR, 'Background Paper No 1', 2; International Committee of the Red Cross, 'Additional Protocol I 1977'. <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>. Last visited 13 October 2010.

39 NH. Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, <http://www.icrc.org/eng/resources/documents/publication/p0990.htm>; Brown, 'Proportionality and Just War', 177-180.

‘Both humanitarian actors and the media tend to treat this pattern of violence as “normal” and are instead drawn toward singling out “unconventional” types of weapons, such as white phosphorous or dense inert metal explosives (DIME).⁴⁰ Raising consciousness about the humanitarian impact of explosive violence in order to change this perception could be an important first step towards strengthening IHL’s ability to more effectively address the problem of explosive weapons’ use in populated areas.⁴¹

Thus, while a useful framework for propelling the explosive weapons debate is firmly established in IHL, there are several challenges to be met in order to fulfil this role satisfactorily. Although a prohibition on indiscriminate violence appears to be in place, and although actors in an armed conflict are obliged to avoid civilian casualties and weigh the potential benefits of military operations against likely humanitarian concerns, these rules are often ambiguously interpreted. This makes it difficult to hold combatants accountable for specific instances of explosive violence, a problem which is compounded by the lack of *de jure* recognition of explosive weapons as a distinct category of armaments. Do international treaties prohibiting the production, distribution and use of specific weapon systems offer a better foundation on which to base advocacy efforts?

3.3 International Humanitarian Law and the explosive weapons debate

The previous paragraphs have outlined some developments in international humanitarian law that have attempted to place restrictions on the means and methods of warfare. During the same period, arms control treaties have placed specific, sometimes all-encompassing, prohibitions on particular types of weapons.⁴² The prohibition of the use of explosive bullets in combat had wider implications for some states as they quickly abandoned the production,

storage and trade in explosive bullets. Even treaties that only outlaw certain aspects of weapon systems can therefore exact a normative influence which expands their original *de jure* scope.⁴³

The 1977 First Additional Protocol to the Geneva Convention states that it is “prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”.⁴⁴ This could be considered as an attempt to broaden the scope of arms control treaties from specific weapon systems to entire weapon categories. The 1980 CCW has struggled to explicitly prohibit the use of specific weapons. Regarding the use of incendiary weapons, mines, booby-traps and ‘other devices’ (IEDs), the CCW frequently emphasizes *restrictions* rather than *prohibitions*. This characteristic has diminished the efficacy of the CCW as a practical instrument of arms control, although a 1996 amendment expanded the scope and strength of the restrictions placed on the aforementioned categories of weapons. However, what is perhaps most significant about the CCW in light of the explosive weapons debate is that two of its protocols (namely Prot II (original and amended) and Prot. III) give a definition of what constitutes a ‘concentration of civilians’ and that suggests a prohibition on the use of ‘booby-traps and other devices’ in such areas.⁴⁵ Unfortunately the effectiveness of this prohibition is reduced by extensive qualifications, but through it the CCW “does at least recognise a specific link between the use of explosive weapons, populated areas and civilian harm”.⁴⁶

Furthermore, the 2003 addition of Protocol V on Explosive Remnants of War makes the CCW important in three other regards. Firstly, Protocol V gives a very broad definition of ‘explosive ordnance’ which can assist to push for the *de jure* recognition of explosive weapons as a distinct category of arms. Secondly, the protocol obligates combatants to minimize the risks of unexploded ordnance and to assist with the post-

40 UNIDIR, ‘Background Paper No 1’, 3.

41 Borrie et al., ‘Learn, Adapt, Succeed’, 23; Moyes, *Explosive Violence*, 13.

42 For instance the use of explosive bullets was outlawed in the St. Petersburg declaration, just as the use of dum-dum (expanding) ammunition was prohibited during the 1899 Hague Peace Conference. The 1925 Geneva Protocol likewise prohibits the first use of biological and chemical weapons.

43 Bring, ‘Regulating Conventional Weapons’, 275-277.

44 Ibid, 277.

45 Ibidem; The United Nations Office at Geneva, ‘The Convention on Certain Conventional Weapons’, (United Nations). <http://www.unog.ch/80256EE600585943/%28httpPages%29/4F0DEF093B4860B4C1257180004B1B30?OpenDocument>. Prot III gives an explicit definition and Prot. II (original and amended) mentions only some elements.

46 Moyes, ‘IEDs and Explosive Violence’, 7.

conflict identification and clearance of such dangerous remnants. Thirdly, Protocol V calls on signatories to record, retain and transmit information concerning their use of ‘explosive ordnance’.⁴⁷ As the AOV report states, “Protocol V’s concern with the ongoing harm caused by explosive weapons can be seen to be based primarily on the customary law requirements for distinction between combatants and non-combatants and to take precautions to minimise the effects of attacks on civilian populations.”⁴⁸ In other words, while the CCW may be of limited use as an arms control treaty, it does further develop a normative framework based on IHL that recognizes explosive weapons as constituting a specific danger for civilians. This development has taken several forms; firstly, the CCW defines what constitutes a populated area and has linked the use of explosive weapons in such areas to an increase of civilian harm. Secondly, the CCW recognizes that combatants have a duty to assist with the post-conflict identification and removal of UXO. Thirdly, by demanding that the signatory parties collect and transmit information on their use of explosive ordnance (including landmines and improvised explosive devices), the CCW applies certain obligations across explosive weapons as a distinct category and increases transparency as well as the international community’s ability to hold combatants accountable. Finally, and building on the point above, Amended Protocol II and Protocol V contribute to the *de jure* perception that explosive weapons constitute a specific category of armaments.⁴⁹ It is also worth noting that in 2006, in a Declaration on Cluster Munitions at the Third Review Conference some 25 countries asserted that the use of cluster munitions should be prohibited “within a concentration of civilians” – a valuable reminder that prohibitions on the use of certain explosive weapons in

populated areas have been contemplated and endorsed.⁵⁰ The final two arms control treaties to be touched upon in this section concern the 1997 Mine Ban Treaty and the 2008 Convention on Cluster Munitions (CCM). The first treaty has successfully prohibited the use, stockpiling, production and transfer of anti-personnel mines, while the CCM has essentially done the same for cluster bombs. Besides the fact that both treaties show that there is considerable potential for achieving wide-ranging prohibitions on weapon systems, several other observations can be made that are relevant to the explosive weapons debate.⁵¹ Among much else, both treaties call on the signatories to provide comprehensive assistance to the victims of mines and cluster munitions, to assist directly and indirectly with efforts to clear contaminated areas, and to record and publish in detail where these weapons have been used. Through these directives, both treaties help increase transparency, accountability as well as recognition of victims’ rights. Secondly, the CCM builds on IHL’s longstanding concern with distinction and proportionality in that it is “explicitly concerned with the suffering and casualties caused by cluster munitions at the time of their use as well as when they fail to function as intended.”⁵² Certain weapons with submunitions were held to be capable of avoiding *indiscriminate area effects* (subject to a number of limitations including being “designed to detect and engage a single target object”) and therefore are *not* covered by the Convention.⁵³ The weapons that escape prohibition here are probably far more limited in their effects than the great majority of other explosive weapons. On current data, civilians are by far the most prominent victims of explosive weapons in general and virtually none of the armaments that constitute this category are designed to detect and

47 Protocol V to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, (United Nations 2003); Geneva International Centre for Humanitarian Demining, *A Guide to Cluster Munitions* (Geneva: GICHD 2009), 46-47; Moyes, *Explosive Violence*, 61.

48 Moyes, *Explosive Violence*, 62.

49 Richard Moyes, ‘Implications of the Convention on Cluster Munitions for Developing a Norm Against Area-Effect use of Explosive Weapons’, (Landmine Action, 23 July 2008) 1-3. <http://www.landmineaction.org/resources/The%20CCM%20and%20area-effect%20use%20of%20explosive%20weapons.pdf>. Last visited 13 October 2010.

50 ‘Declaration on Cluster Munitions’, Third Review Conference of States Parties to the CCW, Geneva, CCW/CONF.III/WP.18, 17 November 2006.

51 See: International Committee of the Red Cross, ‘International Humanitarian Law – Convention on Cluster Munitions’. <http://www.icrc.org/ihl.nsf/INTRO/620?OpenDocument>. Last visited 12 October 2010; International Campaign to Ban Landmines, ‘Treaty Basics’. <http://www.icbl.org/index.php/icbl/Treaties/MBT/Treaty-Basics>. Last visited 12 October 2010.

52 Moyes, *Explosive Violence*, 62.

53 Article 2(c) to the 2008 Convention on Cluster Munitions; Rappert and Moyes, ‘Enhancing the Protection of Civilians’, 40-41.



The national Regulatory Authority UXO/Mine Action Sector in Laos PDR destroys submunitions near a village in Wiengkhuang province, Lao PDR, November 11, 2010. During a Secret War in the 1960s and 70s US military forces dropped over 270 million clusterbombs in Lao PDR.
©IKV Pax Christi

Operation Accountability (1993) and Operation Grapes of Wrath (1996)*

Location

Towns and cities in southern Lebanon

Civilian casualties

118 killed and over 500 injured

154 killed and 351 injured

Responsible parties

Israeli Air Force (IAF) and Israel Defense Forces (IDF)

Explosive weapon

Airstrikes and artillery bombardments

Both of these operations were major military offensives undertaken as part of the 1982-2000 Israeli invasion of southern Lebanon. They were launched in response to mounting numbers of Hezbollah attacks on settlements in northern Israel and to counter the rising number of casualties inflicted on Israeli troops stationed in Lebanon. Besides targeting Hezbollah personnel and strongholds, the operations also intentionally attacked civilian and infrastructural targets in an attempt to pressure the Lebanese government into constraining Hezbollah and to undermine public support for the militants. Both operations completely failed to achieve these aims. Not only were the attacks unable to significantly affect Hezbollah's military capabilities, the strikes on civilian targets actually caused many more Lebanese citizens to rally behind the organization. Conversely, both operations caused considerable damage to Israel's reputation, especially after Israeli artillery destroyed a UN facility at Qana in 1996, which caused over a hundred civilian casualties. Both of these operations showed that using explosive weapons in populated areas can be a strategically counterproductive as well as a humanitarian tragedy.

* Amnesty International, 'Israel/Lebanon: Unlawful Killings During Operation "Grapes of Wrath"', (23 July 1996) 4. <http://www.amnesty.org/en/library/asset/MDE15/042/1996/en/dbadaf6a-eaf6-11dd-aad1-ed57e7e5470b/mde150421996en.pdf>. Last visited 19 October 2010; Human Rights Watch, 'Operation Grapes of Wrath: the Civilian Victims', (September 1997). <http://www.hrw.org/reports/1997/isrleb/Isrleb.htm>. Last visited 19 October 2010; Byman, 'Israel and the Lebanese Hizballah', 317-319; Wehrey, 'A Clash of Wills', 61; Harik, *Hezbollah*, 114-118.

engage only a single target object.⁵⁴

What does this short overview of arms control treaties tell us that is relevant to the debate on explosive weapons? It shows that efforts to achieve comprehensive prohibitions on the use, production, transfer and stockpiling of specific weapons systems has achieved considerable success in the past, with the recent Mine-Ban Treaty and the CCM being spectacular examples. However, the 1977 First Additional Protocol has also made it apparent that broad rules regarding the conduct of attacks do little to regulate specific weapon types, and the Convention on Certain Conventional Weapons teaches that restrictions alone may be insufficient to limit a weapon's use in practice. In both cases, ambiguity regarding certain terms or provisions can leave the rules open to widely divergent interpretations.

What the First Additional Protocol and the CCW have done, however, is contribute to the ongoing development of a normative framework that ties the use of explosive weapons to unacceptable levels of civilian harm, especially when these weapons are used in a populated area. Aspects of this framework have been further strengthened and expanded by the Mine-Ban Treaty and, most recently, the CCM. Besides reaffirming the prohibition on indiscriminate attacks and underlining combatants' obligations to minimize civilian harm, these latter two treaties increase combatants' responsibilities towards victims of explosive violence and increase the ability of the international community to hold Parties to the Treaties accountable for their use of explosive weapons.

3.4 Conclusions

Recent arms control treaties have shown that international advocacy efforts to place comprehensive restrictions on the means and methods of warfare can be successful, especially when organizations, states and

54 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; 2008 Convention on Cluster Munitions; Moyes, *Explosive Violence*, 62; Richard Moyes, 'The Convention on Cluster Munitions and State Responsibility to Gather Data on Deaths, Injuries and Wider Negative Economic and Social Outcomes Resulting from Armed Violence', (Landmine Action, 16 July 2008) 1-3. <http://www.landmineaction.org/resources/CCM%20and%20data%20on%20the%20impact%20of%20armed%20violence.pdf>. Last visited 22 October 2010.

individuals promoting such an agenda work closely together. By incorporating mechanisms that focus on combatants' accountability, responsibility and transparency with regard to their use of certain weapon systems, the CCW, the Mine Ban Treaty and the CCM have created precedents that can also serve those who wish to raise awareness about the broader category of explosive weapons.⁵⁵

Furthermore, these treaties have built on, and contributed to, international humanitarian law and its concerns for proportionality, distinction and precaution in regard to the use of force in armed conflicts. The successes of recent arms control treaties and the ongoing development of international legal norms that protect civilians from indiscriminate attacks, provide a basis from which to work towards the recognition that explosive weapons constitute a distinct category of armaments that pose a key humanitarian threat to civilian populations. This basis can also assist with the formulation of policies, practices and conventions that document the occurrence of explosive violence, restrict its effects and provide assistance to its victims. These are inspiring and hopeful developments.⁵⁶

At the same time, however, it is also necessary to recognize the shortcomings of an approach grounded solely in IHL or based fully on past experience with arms control treaties. As of yet IHL does not recognize explosive weapons as constituting a distinct category of arms, and several treaty articles that explicitly or implicitly prohibit indiscriminate attacks or call for precautionary measures to protect civilians, are ambiguously worded to such an extent that they can be interpreted in a variety of ways. This limits their effectiveness as a basis for placing limitations on explosive violence. Furthermore, the history of arms control treaties shows that attempts to institute prohibitions on a broader category of weapons, as opposed to clearly specified weapon systems, have generally been of limited practical use. These shortcomings have prompted many participants in the explosive weapons debate to look for alternative ways of framing the humanitarian problem of explosive violence, and it is to these that this report now turns.⁵⁷

55 Borrie et al., 'Learn, Adapt, Succeed', 19-24; Moyes, *Explosive Violence*, 63.

56 Moyes, *Explosive Violence*, 60-61, 63; Moyes, 'Implications of the Convention on Cluster Munitions', 1-3; UNIDIR, 'Background Paper No 1', 2-3.

57 Moyes, *Explosive Violence*, 63; UNIDIR, 'Background Paper No 1', 2-3.

4 What is to be done? Avenues for policy and advocacy

*'Achieving a strong stigma against the use of explosive weapons in populated areas is a plausible goal for collective action by states, international organisations and civil society.'*⁵⁸

The first chapter of this report highlighted the severe humanitarian problems that can arise from the use of explosive weapons in populated areas. Explosive violence frequently causes unacceptable levels of harm to civilians, who constitute the overwhelming majority of its victims. States appear to be well aware of explosive weapons' tendency to cause disproportionate harm to non-combatants, as governments show a marked reluctance to use them in a domestic setting and prohibit their private ownership. In practice, therefore, governments already view these weapons as belonging to a very specific category of armaments.

The third chapter, on international humanitarian law and the influence of arms control treaties showed that there are several limitations to addressing the explosive weapons dilemma from a purely legal perspective. First and foremost, explosive weapons are not yet recognized as constituting a distinct category in international humanitarian law. Secondly, prohibitions on inflicting indiscriminate (explosive) harm on civilians often leave too much room for interpretation to function as a practical limitation on the means and methods of (explosive) warfare. Thirdly, although recent history has shown the great potential for successfully concluding arms control treaties that comprehensively ban *specific* explosive weapons, that same history also indicates that effectively formulating such treaties to address explosive weapons in *general* could be very difficult indeed.

Nevertheless, the international community increasingly recognizes that explosive weapons can pose an unacceptable threat to civilians, and developments in IHL as well as recent arms control successes have provided policy makers and those engaged in advocacy efforts with useful legal precedents. These can play an important role in future efforts to increase the protection of civilians from explosive violence.

But beyond legality lies the question of legitimacy; political will, public outcry and increased transparency are also powerful tools that can be used to challenge the acceptability of certain means and methods of warfare. Building on this observation and the findings from previous chapters, this part of the report will propose avenues for policy and advocacy which can assist the international community in its efforts to reduce the suffering caused by explosive weapons.

4.1 Bringing in the state

States' moral and legal obligations to protect civilians from indiscriminate violence and to take all reasonable precautions to avoid collateral damage, rightfully form one of the foundations on which policy makers and advocacy groups can advance the explosive weapons debate. What may be less apparent is that reducing explosive violence in populated areas can also be in states' own strategic best interests.

The AOA report notes that credibly condemning non-state actors' use of explosive violence may be difficult as long as states' use of explosive weapons in populated areas has not been stigmatized. This implies that stronger state restrictions on the use of explosive weapons amongst foreign populations may be reciprocated by the diminishing ability of non-state actors to use such armaments without losing public legitimacy (at least where those actors make a claim to some legitimacy amongst the population). While certainly worthy of further consideration, the incentives that this mechanism provides states with are rather indirect. Furthermore, many of today's conflicts have shown time and again that civilians are often the intended targets of insurgent attacks. It is unlikely that stigmatization will deter organizations and individuals who purposefully seek to kill and injure non-combatants.⁵⁹ In addition to the approach that AOA outlines, there is also considerable benefit to be gained from pointing out to states the grossly counterproductive potential of indiscriminate violence. Collateral damage is not only a tragedy for those directly affected, it has also frequently led to a sharp escalation of violence which far outweighed the possible military advantages that resulted from the initial attack. Recent publications indicate that in Afghanistan, significant numbers of men have joined the Taliban and other militias in order to exact revenge for family members and friends who were unintentionally killed and wounded during ISAF operations. These findings are supported by a 2009 UNAMA report which shows that airstrikes by Coalition forces continue to cause considerable civilian casualties which, even though they are unintentional, dangerously undermine the legitimacy of the Western forces.⁶⁰

59 Moyes, *Explosive Violence*, 53-55.

60 Sultan Barakat and Steven A. Zyck, 'Afghanistan's Insurgency and the Viability of a Political Settlement', *Studies in Conflict & Terrorism* 33:3 (March 2010) 199; David Kilcullen, 'Taliban and Counter-



An Iraqi Army soldier stands guard at the scene of a car bomb attack near a popular restaurant in Basra, Iraq's second-largest city, 340 miles (550 kilometers) southeast of Baghdad, Iraq, Tuesday, Nov. 9, 2010. Car bombs struck three Shiite cities in southern Iraq the day before, killing and wounding scores of people, police said.
© AP Photo / Nabil al-Jurani

The Arab-Israeli conflict provides various illustrations of the strategic counter-productiveness of using explosive weapons in areas of civilian concentration, of which the following example is but one. Between 1982 and 2000, Israel occupied parts of southern Lebanon and was engaged in extensive military operations against the Shiite militants of Hezbollah. Israel's reliance on airstrikes and artillery barrages and the fact that Hezbollah targets were often located in populated areas frequently resulted in large numbers of civilian casualties due to collateral damage. Not only did these strikes fail to significantly reduce Hezbollah's military capabilities, the civilian death toll that resulted greatly boosted the legitimacy that Hezbollah enjoyed among Lebanese citizens of all backgrounds. It was precisely this popular support that enabled Hezbollah to gain recruits, funding, intelligence and other essentials needed to wage a drawn-out campaign of guerrilla warfare against a stronger opponent. While by no means the sole reason for Israel's eventual withdrawal from Lebanon, the civilian harm that arose from the indiscriminate effects of explosive violence did have significant strategic consequences.⁶¹

The post-1945 world had seen a large number of armed conflicts that pitted state forces against non-state actors. In many of these conflicts, attaining and maintaining public support has been of crucial importance to both sides. The recognition that winning 'hearts and minds' can be of more significance than the ability to inflict massive destruction has been making significant headway in recent years. Perhaps the best illustration of the fact that states are starting to recognize the potential downsides of using (explosive) violence in conflicts that revolve around, and are often fought in the midst of, civilian populations, is given by the latest US field manual on counterinsurgency.⁶²

Insurgency in Kunar', in: Antonio Giustozzi (ed.), *Decoding the New Taliban: Insights from the Afghan Field* (London: Hurst 2009), 240; UNAMA, 'Afghanistan Mid Year Bulletin', 13.

61 Frederic M. Wehrey, 'A Clash of Wills: Hizballah's Psychological Campaign Against Israel in South Lebanon', *Small Wars & Insurgencies* 13:3 (autumn 2002) 61; Judith Palmer Harik, *Hezbollah: the Changing Face of Terrorism* (London: I.B. Tauris 2004), 123; Daniel Byman, 'Israel and the Lebanese Hizballah', in: Robert J. Art and Louise Richardson (eds.), *Democracy and Counterterrorism: Lessons from the Past* (Washington: United States Institute of Peace Press 2008), 317-319.

62 John Borrie, 'Protecting Civilians from Explosive Violence: Time for States to Raise their Voices', (Disarmament Insight, 22

Published in 2006, *FM 3-24: Counterinsurgency* represents the evolution of the US military's thinking on counterinsurgency warfare. Among the many ideas that it sets forward is the finding that 'an operation that kills five insurgents is counterproductive if the collateral damage or the creation of blood feuds leads to the recruitment of fifty more.'⁶³ Elsewhere, the manual advocates proportionality in the use of force and underlines the importance of taking sufficient precautions to limit the harmful effects of war on non-combatants.⁶⁴ In fact, at one point *FM 3-24* stresses that 'bombs delivered by fixed-wing close air support may effectively destroy the source of small arms fire from a building in an urban area; however, direct-fire weapons may be more appropriate due to the risk of collateral damage to nearby buildings and non combatants.'⁶⁵ The potential for airstrikes to generate legitimacy-undermining collateral damage is returned to in an appendix as well.⁶⁶

What *FM 3-24* and the examples cited in the previous paragraphs make clear, is that the use of explosive weapons in populated areas is foremost a humanitarian problem, but that it can also have far-reaching strategic implications for the states that use these weapons in populated areas.

4.2 Bringing in the non-state actor

It needs to be reiterated that AOAV's data on incidents of explosive violence indicates that non-state actors are responsible for the majority of civilian casualties. In principle, this means that in order to successfully tackle this problem, advocacy efforts will need to focus on non-state actors as well as governments. In practice, however, engaging with such groups appears to be considerably more difficult than talking with states. Beyond the question of who to talk to in movements which are often heterogeneous in nature, lies the bigger

June 2009). <http://disarmamentinsight.blogspot.com/2009/06/protecting-civilians-from-explosive.html>. Last visited 15 October 2010; Rogers, 'Civilians in Armed Conflict', 45.

63 Headquarters Department of the Army, *FM 3-24: Counterinsurgency* (Washington: US Army 2006), 1-25.

64 Headquarters Department of the Army, *FM 3-24*, 1-9, 1-27, 5-27, 7-5 – 7-6.

65 *Ibid.*, 7-7.

66 *Ibid.*, E-1 – E-2.

2006

Damadola airstrike*

Location

Damadola, Bajaur tribal area, Pakistan

Civilian casualties

18–25 killed (estimate) and an unknown number injured

Responsible party

US Central Intelligence Agency (CIA)

Explosive weapon

Hellfire missiles launched by Predator drones

On the 13th of January, 2006, several unmanned ‘Predator’ drones operated by the CIA attacked Damadola, a village located in north-western Pakistan. During the attack, four to ten missiles were launched at buildings in which a senior al-Qaeda operative was suspected to be hiding. It quickly became apparent, however, that Ayman al-Zawahiri, the attack’s intended target, was not present in Damadola at the time of the strike. Although there is a considerable lack of clarity over the exact death toll and whether or not militants were among those killed, it appears that non-combatants constituted the majority of the casualties. In the wake of the attack, Pakistani government officials criticized the US for carrying out strikes within their territory and condemned the loss of civilian life. Nevertheless, American forces have continued to use drones to attacks suspected Taliban and al-Qaeda members, causing more civilian casualties in the process. There are strong indications that the collateral damage incurred through these strikes is contributing to more popular support for Pakistani militants, raising the question of whether or not these operations are strategically viable in the long run.

* ‘Zawahiri’ Strike Sparks Protest’, *BBC News* (14 January 2006). <http://news.bbc.co.uk/2/hi/africa/4613108.stm>. Last visited 20 October 2010; Christina Lamb, ‘Airstrike Misses Al-Qaeda Chief’, *The Sunday Times* (15 January 2006). <http://www.timesonline.co.uk/tol/news/world/article788673.ece>. Last visited 20 October 2010; Imtiaz Ali and Massoud Ansari, ‘Pakistan Fury as CIA Airstrike on Village Kills 18’, *The Sunday Telegraph* (15 January 2006). <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/1507895/Pakistan-fury-as-CIA-airstrike-on-village-kills-18.html>. Last visited 20 October 2010; Catherine Philp, ‘Drone Strikes the Most Effective Weapon Against Al-Qaeda – But at What Cost?’, *The Sunday Times* (2 June 2010). <http://www.timesonline.co.uk/tol/news/world/asia/article7142182.ece>. Last visited 20 October 2010; Rogers, ‘Civilians in Armed Conflict’, 20-23.

question of whether non-state actors are actually amenable to dialogue on the topic of explosive violence in the first place. The historical record does not provide a clear-cut answer.

Recent attempts to engage with non-state actors in order to increase the protection of civilians have yielded some successes. As Ban Ki-moon’s 2009 report makes clear, several ‘codes of conduct’ have been drafted which have been signed by rebel groups from a variety of countries, including Colombia, Sierra Leone and Sri Lanka. Additionally, there have been fruitful efforts to gain armed groups’ agreement on ending the use of anti-personnel mines and halting the recruitment of child soldiers. These initiatives are to be commended and should naturally be supported. As the Secretary-General notes, reciprocity can be an important concept in these efforts; when non-state actors increase their compliance with international humanitarian law, they can expect to enjoy increased protection under that same legal framework themselves.⁶⁷

The fact that some non-state actors appear to be acutely aware of the potency of stigmatization can create possibilities for gaining their cooperation on matters of humanitarian concern. For example, the Lebanese Hezbollah has actively sought to avoid being labelled a terrorist organization by the international community. Such aspirations provide potential for engagement on issues linked to the protection of non-combatants from explosive violence. On the other hand, groups like the Taliban appear to be far less worried about causing domestic or international outrage and continue to actively target civilians. The opportunities for working with such groups in order to protect civilian populations from explosive violence therefore seems decidedly limited.⁶⁸ What these few examples aim to underline is that non-state actors can and should be approached as part of efforts to restrict the use of explosive weapons in populated areas. Indeed, past experience provides encouragement that such efforts can yield concrete benefits to civilians caught in warzones. At the same time however, gaining non-state actors’

67 Ki-moon, ‘Report of the Secretary-General’, 9; Holmes, ‘Statement by John Holmes’, 5.

68 Harik, *Hezbollah*, 1-3; Rogers, ‘Civilians in Armed Conflict’, 15.

compliance with international laws and norms on the protection of civilians has proven very difficult, partly because it is often very hard for the international community to hold such groups accountable or to bring them to justice. Furthermore, advocacy efforts must take care not to be perceived as increasing the legitimacy of armed groups. For example, using the ‘strategic self-interest’ argument in order to convince non-state actors to reduce their use of explosive violence may lead to criticism which could seriously damage advocacy efforts. For these and other reasons, it appears to be more practical at this moment in time to focus efforts to reduce explosive violence primarily on states.⁶⁹

4-3 A framework for action: towards the stigmatization of explosive violence in populated areas

IKV Pax Christi fully supports the recommendations for policy and advocacy that are outlined in AOA’s report on explosive violence. These opportunities for action take into account both the possibilities and the obstacles presented by IHL and recent arms control treaties, as well as states’ *de facto* recognition of explosive weapons as constituting a distinct category of arms. In the following sections, IKV Pax Christi presents these recommendations and contributes its own based on the arguments outlined in this chapter.

Build the debate⁷⁰

The most pressing need is for NGOs, IOs, states and individuals to work together in order to increase international awareness that explosive violence in populated areas leads to unacceptable levels of civilian harm. This can be achieved by:

- » **Adopting a common language** that allows for consistent responses to incidents of explosive violence.

- » **Advocating a common cause** through the consistent adaptation and use of terms such as ‘explosive violence/weapons’, ‘populated areas’ and ‘unacceptable civilian harm’.
- » **Challenging the status quo** by emphasizing that the use of explosive weapons in populated areas is anything but normal, as evidenced from states’ reluctance to use them domestically and the fact that these incidents frequently lead to disproportionate civilian harm.
- » **Attracting public and media attention** in order to raise awareness about the humanitarian impact of the use of explosive weapons in populated areas and to challenge existing perceptions that collateral damage is a ‘normal’ aspect of armed conflicts.
- » **Framing the problem** so that it can be communicated to a host of different constituents.

Build transparency⁷¹

While there is a large amount of anecdotal information available on the effects of using explosive weapons in populated areas, dedicated analyses of relevant data are sparse. More work is needed to address this deficiency because accurately documenting the humanitarian consequences of explosive violence in populated areas can be a powerful way of convincing a wider audience of the necessity to address this issue. In order to build transparency, specific attention should be paid to:

- » **States collecting and publishing information on the use of explosive weapons.** The CCW requires their signatories to provide detailed accounts of how, when and where such weapons were used. This can function as an important precedent to expand the scope of the data collection and dissemination obligation to cover all explosive weapons.
- » **Reminding states of their responsibility to collect and publish information** on their use of explosive weapons. NGO’s and IOs can play a big role in reminding states to their obligations.

69 Ki-moon, ‘Report of the Secretary-General’, 8-10; UNIDIR, ‘Discourse on Explosive Weapons’, 5; Moyes, ‘Explosive Violence in Areas of Civilian Concentration’, 6-7; Moyes, ‘IEDs and Explosive Violence’, 8-9.

70 Moyes, *Explosive Violence*, 14-15; UNIDIR, ‘Background Paper No 1’, 4; UNIDIR, ‘Discourse on Explosive Weapons’, 4-5; UNIDIR, ‘Background Paper No 2’, 3; Buhmann, ‘The Direct and Indirect Costs of Explosive Violence’, 761.

71 Moyes, *Explosive Violence*, 15; UNIDIR, ‘Background Paper No 1’, 4-5; UNIDIR, ‘Discourse on Explosive Weapons’, 3-4; UNIDIR, ‘Background Paper No 2’, 3; Borrie et al., ‘Learn, Adapt, Succeed’, 20, 22; Buhmann, ‘The Direct and Indirect Costs of Explosive Violence’, 761; Hicks et al., ‘The Weapons that Kill Civilians’, 1585, 1588; Moyes, ‘The Convention on Cluster Munitions and State Responsibility’, 1-3.

- » **Documenting state and non-state actors' use of armed violence.** By engaging in data collection and analysis themselves, NGOs and IOs can greatly increase transparency independent of combatants' willingness to provide relevant information.
- » **Assess combatants' compliance with IHL.** By documenting the details of civilian casualties during armed conflict, the international community can better implement, and monitor combatants' compliance with, IHL.

Build accountability⁷²

Beyond raising awareness of the unacceptable civilian harm that arises from the use of explosive weapons in populated areas and gathering reliable data to strengthen this argument, efforts should also be made to hold states accountable for using these weapons. This goal can be pursued by:

- » **Requesting policy statements on the domestic use of explosive weapons.** Under which circumstances would governments use explosive weapons amongst their own citizens? Which weapons would be chosen and how would they be employed? How would targets be identified and which precautions would be taken to avoid collateral damage?
- » **Requesting policy statements on the use of explosive violence abroad and during armed conflicts.** By getting states to justify their use of explosive weapons abroad, a useful contrast can be established with governments' reluctance to use such weapons domestically. This contrast can contribute to the development of a normative presumption that using explosive weapons in populated areas is unacceptable under all circumstances.⁷³
- » **Calling for the clarification of incidents of explosive violence.** By systematically challenging states and non-state actors about their use of explosive weapons in populated areas that cause(d) excessive harm, those concerned with protecting civilians from explosive violence can compel combatants to assess their actions and to take responsibility for the consequences.

⁷² Moyes, *Explosive Violence*, 15-16; UNIDIR, 'Background Paper No 1', 4-5; UNIDIR, 'Background Paper No 2', 3; Ki-moon, 'Report of the Secretary-General', 13-14; Holmes, 'Statement by John Holmes', 7-8.

⁷³ Borrie et al., 'Learn, Adapt, Succeed', 20.

Build states' responsibility towards the victims of explosive violence⁷⁴

Both the Mine-Ban Treaty and the CCM incorporate provisions that obligate their signatories to provide care to the victims of these weapons and to assist with the clearance of unexploded ordnance. Building on the precedents set by these treaties, advocacy efforts should be deployed to:

- » **Expand states' recognition of victims' rights** to encompass injuries and damages incurred irrespective of the type of explosive weapon used.
- » **Increase states' responsibility for assisting with UXO clearance** irrespective of the type of explosive weapon used.
- » **Gather and publish data on the consequences of explosive violence** including casualty figures, the number of people suffering from physical disabilities or psychological injuries, as well as socio-economic damage, reconstruction costs and the impact on development.

By supporting this framework and putting its recommendations into practice, IKV Pax Christi hopes to help develop a strong stigma against the use of explosive weapons in populated areas. Stigmatization played an important role in the processes which culminated in the Mine-Ban Treaty and the CCM. IKV Pax Christi firmly believes that stigmatization can play a key role in *restricting* the use of these weapons in populated areas. Establishing an international norm against the use of explosive weapons in populated areas would be a very important, and very real, improvement to the security of civilians in times of armed conflict. The growing realization that avoiding collateral damage can be of fundamental strategic importance to governments engaged in armed conflicts provides grounds for establishing a common interest between governments, IOs and NGOs focused on working together to reduce the number of civilians that fall victim to explosive violence.⁷⁵

⁷⁴ Moyes, *Explosive Violence*, 16; UNIDIR, 'Background Paper No 1', 4-5; UNIDIR, 'Background Paper No 2', 3; Ki-moon, 'Report of the Secretary-General', 15-16.

⁷⁵ Borrie et al., 'Learn, Adapt, Succeed', 20; see also: John Borrie, 'Disarmament as humanitarian action: from perspective to practice', in: John Borrie and Vanessa Martin Randin (eds.), *Disarmament as humanitarian action: from perspective to practice* (Geneva: United Nations 2006), 17-19.



An Iraqi civilian cries after learning of the death of a family member injured during the US bombardment of Baghdad, 11 April 2003 at a main hospital in the Iraqi capital.
© AFP Photo

4.4

The role of the 2010 Oslo Commitments

On the 12th of May 2010, over sixty countries signed the Oslo Commitments, a set of proposals centred on the determination to ‘achieve measurable reductions in armed violence’.⁷⁶ Amongst these proposals was a commitment to ‘measure and monitor the incidence and impact of armed violence at national and sub-national levels in a transparent way’, as well as the agreement to ‘recognise the rights of victims of armed violence in a non-discriminatory manner, including provision for their adequate care and rehabilitation, as well as their social and economic inclusion, in accordance with national laws and applicable international obligations’.⁷⁷ By including these agreements, the Oslo Commitments give a powerful impetus to the framework for action outlined in this chapter, especially with regards to building transparency and increasing combatants’ responsibility for the damages and suffering they cause whenever they use explosive weapons in populated areas.⁷⁸

4.5

Limitations on the collection and analysis of conflict data

Gathering, analyzing and publishing reliable information on the effects of explosive violence in populated areas is a central element of the Oslo Commitments as well as of the framework for action outlined above. But as a report on the civil society activities that took place during the Oslo conference points out, states often lack the capacity or political will to accurately monitor armed violence and publicize its effects on the civilian population. As the report rightly indicates, this creates all the more reason for the independent collection and analysis of such data. NGOs and IOs are well-suited to this task and have the additional benefit of being able to contribute to efforts to raise consciousness about this issue and increase the political will to address it.⁷⁹

76 The Oslo Commitments on Armed Violence: Achieving the Millennium Development Goals, (12 May 2010) 1. <http://www.osloconferencearmedviolence.no/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=24790>. Last visited 15 October 2010.

77 The Oslo Commitments on Armed Violence, 1.

78 See also: Moyes, ‘Explosive weapons in populated areas’, 1-9.

79 Summary of the Civil Society Events During the Oslo Conference on Armed Violence, Geneva 11-13 May 2010, 1-2.

Of course, attempts to collect data on the effects of armed conflict in general and explosive violence in particular, are subject to inherent difficulties. Some such difficulties are matters of quantification, such as how to measure the psychological effects of explosive violence on individual victims, or its long-term socio-economic impact on societies as a whole. Others are limitations of a distinctly practical nature, such as how to accurately count the numbers and types of victims during or after an armed conflict. Of course, neither a state’s unwillingness to be sufficiently transparent on conflict data, or inherent problems with the quantification or gathering of such information should dissuade more research into the effects of explosive violence. If anything, awareness of the limitations on data gathering and analysis may serve to steer research efforts away from unrealistic or unfeasible expectations.⁸⁰

Finally, it is interesting to note that several commentators believe that medical professionals can play an important role in documenting the effects of explosive weapons. As Caecilie Buhmann aptly summarizes, ‘through the use of sound research methods [medical professionals] can document the human consequences in terms of death, injury, and excess disease. This documentation is important in seeing any violent conflict as a humanitarian emergency, and it can be used in health diplomacy for weapons control.’⁸¹ Robin Coupland adds that throughout recent history, medical professionals’ observations of the effects of weapons have contributed to the formulation of laws and policies which restricted the design, use and transfer of armaments. In short, specialists with a medical background can not only lend credibility and expertise to data collection programs, but such work has in itself proven to be an effective way of imposing limits on the means and methods of warfare.⁸²

80 Rappert and Moyes, ‘Enhancing the Protection of Civilians’, 31-32; Robin Coupland, ‘The “Solferino Cycle” and Documenting the Humanitarian Effects of Explosive Weapons’, (Presentation recording, 29 April 2010) 04:26 minutes. http://explosiveweapons.info/wp-content/uploads/2010/02/coupland_solferino1.m4a. Last visited 18 October 2010.

81 Buhmann, ‘The Direct and Indirect Costs of Explosive Violence’, 762.

82 Robin Coupland, ‘The Effects of Weapons and the Solferino Cycle: Where Disciplines Meet to Prevent or Limit the Damage Caused by Weapons’, *BMJ* 319 (October 1999) 864-865.

4.6 Conclusions

Central to the framework for action outlined in this chapter is the belief that stigmatizing the use of explosive weapons in populated areas is a crucial step towards norms, policies or laws that restrict the use of these weapons in practice. In order for efforts at stigmatization to be as effective as possible, IKV Pax Christi urges all parties concerned with this topic to work together on establishing a common cause through the adaptation of a common language used to respond to incidents of explosive violence and their effects on civilians. Far too often, explosive violence in populated areas is seen as a 'normal' part of armed conflicts. This commonly held viewpoint needs to change, and states as well as non-state actors need to be systematically challenged on their use of explosive weapons in order to increase their accountability and to ensure that they recognize the rights of victims. In order to successfully pursue these aims, more data needs to be gathered, analyzed and published on the effects of explosive weapons' use in populated areas.



Smoke billows from damaged buildings hit by a Lebanese army artillery shell, during fighting with Islamic militants, at the Palestinian refugee camp of Nahr el-Bared, in the northern city of Tripoli, Lebanon, Wednesday July 25, 2007. Lebanese army troops unleashed barrages of artillery and tank shells at Islamic militants in a Palestinian refugee camp witnesses and security officials said. Army cannons reportedly fired shells at a rate of 8 to 10 every minute at suspected Fatah Islam positions inside the camp. © AP Photo / Hussein Mallav

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A Georgian woman stands near to an apartment block building, damaged and burned during Russian bombing in August 2008 in the town of Gori, northwest of the capital Tbilisi, Georgia, Sunday, Aug. 24, 2008.

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PO BOX 19318
3501 DH Utrecht
The Netherlands

+31 (0)30 233 33 46
info@ikvpaxchristi.nl
www.ikvpaxchristi.nl